Barley Snyder

Supreme Court Takings Decision Doesnt Alter Employee Union Organizing

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A recent U.S. Supreme Court decision may have hampered the ability of external union organizers to solicit agricultural employees, but companies are reminded that the rights of agricultural employees to organize remains.

The June 23 decision concluded that a California regulation mandating agricultural employers allow union organizers onto their property for up to three hours per day, 120 days per year, constitutes a physical "taking" of the farmers' property. And like all cases when the government physically acquires private property for a public use, "the government must pay for what it takes."

The Court's ruling, however, did not open the door for agricultural employers to banish all union organizing activity from its property. Significantly, the decision does not limit the rights of agricultural employees - whether unionized or not - to discuss the terms and conditions of their employment with one another, to distribute union literature, or to solicit other employees to join a union on their employer's premises, so long as it is done on non-working time in non-working areas.

Section 7 of the National Labor Relations Act gives employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."

So as a reminder, while an agricultural employer can generally exclude non-employee labor organizers from entering its private property, its agricultural employees have these Section 7 rights to meet and engage in concerted activities on the work premises. (A narrow exception exists where employees are not "accessible" by the non-employee union organizers, such as employees living on the farm property).

And the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" of the Act. For example, employers may not respond to a union organizing drive by threatening, interrogating, or spying on pro-union employees, or by promising employees benefits if they reject the union. An agricultural employer can limit its employees' concerted activity to non-work time, such as during a break, and to non-work areas, such as a cafeteria or breakroom. The employees' activities also should not disrupt normal production operations.

If you have any questions about the Supreme Court ruling or employee unionizing activity at your agricultural operations, please contact me or Sarah Yerger in Barley Snyder's Employment Practice Group.

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